

2008 Report of  
Statistics Required by the  
Bankruptcy Abuse Prevention and  
Consumer Protection Act of 2005

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# 2008 Report of Statistics Required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

## Introduction

Under 28 U.S.C. § 159(b), enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the Director of the Administrative Office of the United States Courts (AO) is required to submit an annual report to Congress on certain bankruptcy statistics detailed in 28 U.S.C. § 159(c). Section 159(a) of Title 28 provides that clerks of the bankruptcy courts “shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11.” The Director of the AO is required to compile this information, analyze it, and make it accessible to the public as well as Congress. This report is prepared to fulfill this request. Each table in this report displays data in the aggregate, by circuit and by district.

## Summary of Findings

During calendar year 2008, nearly 1.1 million bankruptcy petitions were filed by individuals with predominantly nonbusiness debt, an increase of 32 percent over the number of filings in calendar year 2007. Approximately 66 percent of these cases were filed under chapter 7, in which a debtor’s assets are liquidated and the nonexempt proceeds distributed to creditors. About 34 percent were

filed under chapter 13, in which individuals with regular income and debts below a statutory threshold make installment payments to creditors pursuant to a court-confirmed plan. Less than 1 percent were filed under chapter 11,<sup>1</sup> which allows businesses and individuals to continue operating while they formulate plans to reorganize and repay their creditors.<sup>2</sup>

Almost 1 million cases with predominantly nonbusiness debt were closed during 2008. Of these, approximately 700,000 closed consumer cases, approximately 72 percent of the total number of cases closed during calendar year 2008, are cases that were filed after October 17, 2006, and are therefore within the scope of the reporting requirement.<sup>3</sup> Approximately 83 percent of the consumer cases included in the data analyzed for this report were closed under chapter 7, about 17 percent were terminated under chapter 13, and less than 1 percent were closed under chapter 11. Since the duration of typical chapter 11 or chapter 13 cases is three to five years, closings under these chapters are underrepresented in the data analyzed in this report, and closings under chapter 7 are overrepresented relative to the total population of cases closed by bankruptcy courts in 2008.

Consumer debtors seeking bankruptcy protection under chapters 7, 11, or 13 during 2008 reported holding total assets in the aggregate

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<sup>1</sup> Consumer cases filed under chapter 11 are relatively infrequent (about 9% of chapter 11 cases filed in calendar year 2008 were nonbusiness cases) and are generally believed to result when debtors exceed the debt restrictions of 11 U.S.C. § 109(e), which currently restrict chapter 13 to debtors with less than \$336,900 in noncontingent, liquidated, unsecured debts and less than \$1,010,650 of noncontingent, liquidated, secured debts.

<sup>2</sup> The 1,074,225 bankruptcy petitions filed in 2008 include 1 case with predominantly nonbusiness debt filed under chapter 15. See Table F-2 in *Statistical Tables for the Federal Judiciary: December 31, 2008*.

<sup>3</sup> Specifically, this report includes data from 90 percent of chapter 7 nonbusiness cases (594,682 of 662,894) terminated during 2008, 60 percent of chapter 11 cases (365 of 611), and 37 percent of chapter 13 cases (118,440 of 321,729). In 2007, 47 percent of the cases closed were eligible for inclusion in this report because, by statute, only cases filed after October 17, 2006, may be included in the report. The number of eligible cases will continue to rise as the number of cases that close in future years that were filed before October 17, 2006, will continue to decline.

amount of \$149 billion and total liabilities in the aggregate amount of \$213 billion. The total assets reported by consumer debtors in cases filed under chapters 7, 11, and 13 rose 37 percent over the comparable 2007 numbers; the total liabilities for the same set of cases rose 53 percent over the comparable data for 2007. When considering the magnitude of these increases, recall that consumer filings in 2008 rose 32 percent over 2007. The median average monthly income of all debtors was \$2,628 (6 percent higher than 2007), and the median average expenses were \$2,676 (10 percent higher than 2007).<sup>4</sup> Chapter 7 consumer cases that closed in 2008 had a mean time interval from filing to disposition of 151 days and a median time interval of 118 days. 209,000 reaffirmation agreements were reported filed in 143,000 chapter 7 consumer cases terminated during 2008. In 30 percent of the chapter 13 cases filed during 2008, debtors indicated that they had filed for bankruptcy during the previous eight years, the same percentage reported in 2007.

## Methodology and Data Limitations

### Data on Cases Filed and Closed

There are a number of limitations to the data reported herein. One limitation relates to tables that report on closed cases. Under 28 U.S.C. § 159(a), clerks of court must collect statistics on debtors who meet certain criteria. Judiciary data systems in place when BAPCPA was signed into law were not capable of collecting and reporting all such data. Accordingly, the Judiciary had to build a new data system and software to collect the data required under 28 U.S.C. § 159. Those systems were implemented on October 17, 2006, the general effective date of BAPCPA.

The tables in this report indicate cases filed or closed during calendar year 2008. However,

although all cases filed in 2008 are addressed in the report, the statute's requirement to report on specified characteristics of specific types of debtors for which data have been collected since October 17, 2006, reduces the number of reported cases to only those commenced after October 17, 2006, and closed during the calendar year. As a result, tables based on cases closed during the reporting period will reflect only a subset of all cases closed during the period. The impact of this limitation cannot be determined until BAPCPA data have been collected for a few years. That is, because all cases included in this report must have been filed on or after October 17, 2006, the results for this report primarily will be based on shorter-duration cases and will exclude many of the longer-duration cases opened before October 17, 2006, that would have been included but for the statutory limitation on the filing date. Therefore, the characteristics associated with cases of shorter duration likely will have a greater influence on the data results than they would in a typical year. This limitation has the greatest effect on tables that address cases closed (Tables 3 and 6) and transaction data (Tables 4, 5, 8, and 9; see section on transaction data below).

As more data are accumulated in each succeeding year, the data should become more representative of all closed cases and all transactions that occur while cases are pending.

As a result of this data collection limitation, the cases included in the data analyzed for this report will not accurately reflect all cases closed in 2008. For example, a typical chapter 13 case that results in a standard discharge usually exceeds two years in duration—often taking three to five years—and could include an order on valuation of property, whereas a typical chapter 13 case that terminates in a dismissal may last a few months or less and have no such orders. As a result, the ratio of chapter 13 debtors dismissed during 2008 (the second full

<sup>4</sup> Debtors calculate their average monthly incomes and average monthly expenses during the six months prior to filing and report them to the courts on line 16 of Schedule I (income) and line 18 of Schedule J (expenses). The AO then calculates the median of the average monthly incomes reported by debtors for all districts and circuits.

year after the effective date of the statute) to chapter 13 debtors discharged is higher than the ratio of dismissed debtors to discharged debtors for all chapter 13 cases closed in 2008.<sup>5</sup>

To understand the effect of this limitation, consider that 1,019,426 bankruptcy cases were closed during calendar year 2008, of which 985,238 were identified as cases with predominantly nonbusiness debt.<sup>6</sup> However, only 713,487 of the cases closed during calendar year 2008 had been filed on or after October 17, 2006, by individual debtors with predominantly nonbusiness debt seeking relief under chapters 7, 11, or 13. Due to this limitation, the cases closed that are reflected in the tables in this report account for approximately 72 percent of all cases closed in 2008 addressing predominantly nonbusiness debt. The data summarized in the tables in this year's report represent a significant improvement over the data analyzed in the initial report published in 2008, which covered only 47 percent of all cases closed in which the nature of the debt reported was primarily nonbusiness.

A second limitation relates to the first column of data in each table, which presents total cases. Some tables include reopened and transferred cases in the total, but other tables omit these cases. These cases are excluded when the data would be duplicative; for example, totals for assets and liabilities at the original filing of a case are the same for each reopening of that case. Counting the cases twice (once at filing and once at reopening) would distort the data on reported assets, liabilities, income, and expenses. In all other instances in which they would not affect the results, these cases are included.

## Transaction Data

“Transaction data” refers to case-related activities such as reaffirmation agreements, valuation

orders, creditor misconduct, and attorney sanctions that occur during bankruptcy proceedings (see Tables 4, 5, 8, and 9). Such data are typically captured in docketing activity.

In many instances, BAPCPA requires a report of the total number of cases in which a specific type of transaction has occurred. This affects the way that transaction data are reported. A case may have more than one occurrence of a particular type of transaction. For this reason, the case must be concluded before one can report whether the case meets the requirement to be counted and to ensure that no case is counted more than once. Thus, tables based on transaction data are based only on data from cases closed during the reporting period, so these tables also are subject to the same limitations noted in the section on cases filed and closed, not only because of the requirement to characterize the type of case, but also because case activity that occurred before October 17, 2006, on a case that closed during the reporting period would not have been captured, causing transaction data to be underreported.

In addition, because a case may have more than one occurrence of a specific type of transaction, but the characteristics of each transaction may be different, the case must be counted in each column of a table whenever any occurrence meets the criteria for data in that column. For example, a debtor may enter into more than one reaffirmation agreement. A case is counted in each column of the table whenever the case has one or more reaffirmation agreements meeting the criteria for such column. If a debtor enters into three reaffirmation agreements, two of which include certification from the debtor's attorney and one of which does not, the case is counted in the column representing “number of cases with agreements filed pro se” as well as the column representing the “total number

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<sup>5</sup> In chapter 13 cases with predominantly nonbusiness debt closed in 2008, 209,431 of 423,946 debtors (49 percent) received discharges in 321,729 cases. Data on nonbusiness cases closed are derived from unpublished AO table F-19D2.

<sup>6</sup> See Table F in *Statistical Tables for the Federal Judiciary: December 31, 2008*, for total number of closings.

of cases with agreements filed.” Furthermore, if only one reaffirmation agreement in the example above is approved and two are denied by the court, the case is also counted in the column representing the “number of cases with agreements approved.”

As noted above, the Judiciary had to implement new data collection methods based on docketing activity to report the specific transaction data required by BAPCPA. These new methods consisted of changes made to information technology systems, forms, and court practices to correspond with the October 2006 effective date of certain provisions of BAPCPA. Due to the complex nature of capturing new types of data in the ordinary course of bankruptcy practice and the challenges associated with new information technology systems and processes that had to be developed, some residual issues still affect the uniform and accurate collection of transaction data. The Judiciary has identified many of these issues and is actively pursuing remedies. For example, the data rely on court orders. At this time, only orders associated with motions (or the equivalent) are captured in the electronic system. Data on orders issued by judges when no motion was made by one of the parties (*sua sponte* orders) were not collected for reporting on cases closed in 2008, but will be collected on cases in future reports. Those data collection efforts are in their early stages, so the results provided are likely to change as courts respond to new reporting processes and data collection processes improve.

### Debtor-Provided Data

Many of the BAPCPA reporting requirements rely on data provided by debtors via the submission of forms, schedules, motions, agreements, and other filings with the court. The information provided exclusively by the debtors cannot be validated either by the courts or the AO.

Some data are collected from the forms and schedules submitted at filing. Debtors may fail to provide some or all of the data required for these tables. When incomplete data are submitted, comparisons among two or more columns in any table

may overstate or understate differences. Similarly, when all required data are missing, either because of omission or delayed submission, comparisons between the data and the number of cases become unreliable. Therefore, caution should be used when comparing columns of data or comparing any column of data to the number of cases filed.

For the first time, this report includes a column in each of the Table 1 series (1A, 1B, 1D, 1X) and Table 2 series (2A, 2B, 2D, 2X) that reports the number of cases filed with complete schedules. This is intended to provide a clearer picture of the data providing the basis for the summary values reported in those tables.

Because transaction data are captured from docket activity, the collection of accurate transaction data relies upon debtors, their attorneys, and other case parties who file motions, agreements and other documents with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all. If the filer submits multiple matters under a single court event, the activities may be undercounted or not counted at all.

### Tables

In accordance with BAPCPA, the bankruptcy statistics are itemized by chapter of the Bankruptcy Code with respect to Title 11 and report only on data in cases filed by individual debtors with predominantly nonbusiness debts (“consumer cases”). In chapter 7 cases, a debtor’s assets are liquidated, and the nonexempt proceeds are distributed to creditors. Under chapter 11, debtors are allowed to continue operating while they formulate plans to reorganize and repay their creditors. Under chapter 13, individuals with regular income and debts below a statutory threshold make installment payments to creditors pursuant to a court-confirmed plan. The tables noted in the list below have been created for this report as specified in 28 U.S.C. § 159(c).

The naming convention used for the tables in this report provides that the alphabetic character



<b>BAPCPA Report Tables</b>		
<b>Code</b>	<b>Description</b>	<b>BAPCPA Table</b>
28 U.S.C. § 159(c)(3)(A) and 28 U.S.C. § 159(c)(3)(C)	Assets and Liabilities Reported by Debtors	1
28 U.S.C. § 159(c)(3)(B)	Income and Expenses Reported by Debtors	2
28 U.S.C. § 159(c)(3)(D)	Time Interval From Filing to Closing	3
28 U.S.C. § 159(c)(3)(E)	Reaffirmation Agreements	4
28 U.S.C. § 159(c)(3)(F)(i)	Property Valuation Orders	5
28 U.S.C. § 159(c)(3)(F)(ii)	Chapter 13 Cases Closed by Dismissal or Plan Completion	6
28 U.S.C. § 159(c)(3)(F)(iii)	Prior/No Prior Filings Reported by Debtors	7
28 U.S.C. § 159(c)(3)(G)	Creditor Misconduct and Punitive Damages	8
28 U.S.C. § 159(c)(3)(H)	Rule 9011 Sanctions Imposed Against Debtor's Attorneys	9

immediately following the table number indicates the chapter(s) of the Bankruptcy Code associated with the cases included in the table. “A” indicates cases under chapter 7 only; “B” indicates cases under chapter 11 only; “D” indicates cases under chapter 13 only; and “X” indicates cases under chapters 7, 11, and 13 combined. For example, Table 1D includes only cases under chapter 13.<sup>7</sup>

### **Assets and Liabilities Reported by Debtors**

Tables 1A, 1B, 1D, and 1X report the assets and liabilities of debtors in total and by category of assets and liabilities, as well as the total net scheduled debt, reported by the debtors on Official Bankruptcy Form 6–Summary (B6–Summary of Schedules). “Net scheduled debt” is the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories that are predominantly non-dischargeable. Debt that is pre-

dominantly non-dischargeable may include, but is not limited to, domestic support obligations, taxes, student loans, and pension obligations. Thus, net scheduled debt approximates the amount of debt reported by the debtor at the time of filing that may be eligible for discharge (without regard to security interests) during the case and is referred to in 28 U.S.C. § 159(c)(3)(c) as the “aggregate amount of debt discharged in cases filed during the reporting period.”

A discharge in bankruptcy releases the debtor from personal liability for certain specified types of debts. The discharge is a permanent order prohibiting creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor such as telephone calls, letters, and personal contacts. However, although a debtor is not personally liable for discharged debts, a valid lien (i.e., a charge upon specific property to secure payment of a debt) that has not been voided (i.e., made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured credi-

<sup>7</sup> “C” is reserved for cases filed under chapter 12, which does not apply to consumer cases.

tor may enforce the lien to recover the property secured by the lien. The statute does not provide for linkage of property valuations with any claims by creditors secured by such property in determination of “dischargeable” debt. As a consequence, “net scheduled debt” overstates the amount of debt actually discharged by the amount of unvoided secured debt (e.g., mortgage(s) on real property and many car loans).

All tables that report assets and liabilities (1A, 1B, 1D, and 1X) present data on cases filed during the reporting period by individual debtors with primarily nonbusiness debt. The data for these tables are provided exclusively by the debtors and cannot be validated by the courts. These data typically are provided by the debtor at the time of filing or within 15 days of filing as required by statute, and rules for the data are not typically updated during the case. Only data provided during the initial filing of each case are counted in Tables 1A, 1B, 1D, and 1X; data for reopened and transferred cases are excluded to prevent duplicate reporting.

Table 1X shows that individual debtors with primarily nonbusiness debt seeking bankruptcy protection under chapters 7, 11, or 13 during 2008 reported holding total assets in the aggregate amount of \$149,002,118,000. Eighty-one percent of these assets were categorized as real property, and 19 percent were categorized as personal property. By comparison, filers in 2007 reported total assets in the aggregate amount of \$108,485,865,000. The 2008 amount, which represents a 37 percent increase in reported assets, accompanied a 32 percent increase in the number of cases filed. Filers in the Central District of California (CA-C) reported the largest amount of total assets in any district (\$14,911,886,000), followed by the Middle District of Florida (FL-M) (\$7,686,604,000) and the Eastern District of California (CA-E) (\$6,943,970,000). Debtors reported total liabilities in the aggregate amount of \$213,427,788,000, with 66 percent of liabilities

categorized as secured claims, 1 percent categorized as unsecured priority claims, and 33 percent categorized as unsecured non-priority claims. Although total liabilities grew 53 percent over 2007 (compared to a 32 percent increase in cases filed and a 37 percent increase in assets), the distribution of assets among the three categories (secured, unsecured priority, and unsecured nonpriority claims) remained largely unchanged. Overall, debtors categorized 97 percent of debts and obligations as dischargeable debt. The highest total was that for debtors in CA-C, who reported \$21,356,892,000 in liabilities, followed by FL-M with \$10,939,116,000 in liabilities.

Table 1A shows that debtors in chapter 7 consumer cases reported total assets in the aggregate amount of \$89,647,320,000, a 75 percent increase over the 2007 amount, with 45 percent more cases filed. Eighty-two percent of assets were categorized as real property, and 18 percent were categorized as personal property. Filers in CA-C reported the largest amount of total assets at \$9,812,765,000, followed by debtors in CA-E (\$5,363,808,000) and FL-M (\$4,365,311,000). Debtors reported total liabilities in the aggregate amount of \$144,342,592,000, with 61 percent of liabilities categorized as secured claims, 1 percent categorized as unsecured priority claims, and 37 percent categorized as unsecured non-priority claims.<sup>8</sup> The total reported for liabilities was 74 percent greater than the comparable number for 2007; the secured claims component of the liabilities rose 95 percent; but the increases in unsecured priority claims (up 32 percent) and secured priority claims (up 49 percent) were more modest. Debtors in consumer cases in CA-C reported \$15,673,923,000 in total liabilities, the highest amount, followed by those in CA-E with \$8,756,564,000. Overall, debtors categorized 97 percent of debts and obligations reported as dischargeable debt.

The aggregate amount of total assets in chapter 11 consumer cases is reported as \$1,672,017,000

<sup>8</sup> Due to rounding, percentages do not total 100 percent.

in Table 1B, an increase of less than 1 percent over the amount of assets reported in comparable cases in 2007, despite a 45 percent rise in the number of filings. Seventy-five percent of assets were categorized as real property, and 25 percent were categorized as personal property. Debtors in CA-C reported the largest amount of total assets in any district (\$268,639,000), followed by filers in Northern District of California (CA-N) (\$208,240,000). As reflected in the table, debtors reported total liabilities in the aggregate amount of \$3,497,365,000, 179 percent above the comparable 2007 figure, with 32 percent of liabilities categorized as secured claims, 1 percent categorized as unsecured priority claims, and 67 percent categorized as unsecured non-priority claims.<sup>9</sup> Debtors in consumer cases in the Northern District of Illinois (IL-N) recorded the largest dollar amount of total liabilities for any district at \$1,640,439,000, and those in CA-C reported the second-largest dollar amount of liabilities with \$284,559,000.

Overall, debtors characterized 92 percent of debts and obligations as dischargeable debt. Consumer cases filed under chapter 11 are relatively uncommon (9 percent of chapter 11 cases (i.e., 888 of 10,160 cases) filed in calendar year 2008 were nonbusiness cases) and are generally believed to be the result of debtors' failing to meet the debt restrictions of 11 U.S.C. § 109(e) that currently limit chapter 13 to debtors with less than \$336,900 in noncontingent, liquidated, unsecured debts and noncontingent, liquidated, secured debts of less than \$1,010,650.

As reflected in Table 1D, debtors filing consumer cases under chapter 13 reported total assets

in the aggregate amount of \$57,682,781,000, an increase of 4 percent over the comparable figure for 2007, despite a 12 percent rise in filings.<sup>10</sup> Eighty percent of reported assets were categorized as real property, and 20 percent of assets were categorized as personal property. Debtors in CA-C reported \$4,830,482,000 in total assets, the largest amount for any district, while those in the FL-M had the second-highest total assets with \$3,255,077,000. Total liabilities were reported in the aggregate amount of \$65,587,832,000, 20 percent higher than the comparable figure for 2007. Seventy-seven percent of those liabilities were categorized as secured claims, 2 percent as unsecured priority claims, and 21 percent as unsecured non-priority claims. Debtors in consumer cases in CA-C recorded the largest dollar amount of total liabilities for any district with \$5,398,410,000, followed by those in FL-M, who reported \$3,887,944,000 in total liabilities. Overall, debtors categorized 96 percent of debts and obligations as dischargeable debt.

Data in these tables are subject to the limitations described in the section above on debtor-provided data. Therefore, caution should be used when comparing data in any category of assets or liabilities to that in any other category of assets or liabilities or when comparing data in any category of assets or liabilities to the number of cases filed.

## Income and Expenses Reported by Debtors

Tables 2A, 2B, 2D, and 2X present data on the income and expenses of debtors as reported by the debtors themselves on the Official Bankruptcy

<sup>9</sup> These data are markedly different from the data reported in 2007. The differences appear to result from one case filed in IL-N in which the debtor claimed assets of \$4.3 million and total liabilities of \$1.6 billion, almost all of them unsecured nonpriority claims. The reported unsecured nonpriority claims, if accurate, would account for nearly two-thirds of the national total of unsecured nonpriority claims reported in Chapter 11 filings by individuals with predominantly nonbusiness debts in 2008.

<sup>10</sup> Assets and liabilities reported by individual debtors in chapter 13 cases may skew the subtotals for any given district or circuit. In 2007, a single debtor in CA-C reported \$2.4 billion in assets while reporting total liabilities of \$1.9 million in two chapter 13 filings. This case, and its effect on the 2007 data, may help explain why reported assets did not increase as much in 2008 as total filings of chapter 13 cases did.

Form 6–Summary (B6–Summary of Schedules). All tables in this series address cases filed during the reporting period by individual debtors with primarily nonbusiness debt. The data for these tables are provided exclusively by the debtors and cannot be validated by the courts. A debtor typically provides these data at the time of filing or within 15 days of filing as required by statute. Only data provided during the initial filing of each case is counted in this table. Data for reopened and transferred cases are excluded to prevent duplicate reporting. Median values are calculated only when 10 or more cases are reported.<sup>11</sup>

As reflected in Table 2X, in 2008 a total of 1,052,058 consumer cases were filed under chapters 7, 11, and 13 across the nation. The median current monthly income of all debtors who completed the relevant forms was \$2,972, an 8 percent increase over 2007. The median average monthly income<sup>12</sup> was \$2,628, a six percent increase over 2007, and the median average expenses were<sup>13</sup> \$2,676, a 10 percent increase over 2007. CA-N had the highest median current monthly income with \$3,685, and the District of Puerto Rico (PR) had the lowest median current monthly income with \$1,660. Districts in the first quartile reported median current monthly income between \$1,660 and \$2,644, districts in the second quartile reported median current monthly income between \$2,665 and \$2,867, districts in the third quartile reported median current monthly income between \$2,888 and \$3,116, and districts in the fourth quartile reported median current monthly income between \$3,171 and \$3,685.

The Eastern District of Texas (TX-E) had the highest median average monthly income with \$3,328, and the District of the Virgin Islands (VI) had the lowest with \$1,646. Districts in the first quartile reported median average monthly income

between \$1,646 and \$2,344, districts in the second quartile reported median average monthly income between \$2,345 and \$2,498, districts in the third quartile reported median average monthly income between \$2,505 and \$2,792, and districts in the fourth quartile reported median average monthly income between \$2,793 and \$3,328. CA-N had the highest median average expenses with \$3,699, and PR had the lowest with \$1,551.

A total of 694,855 chapter 7 consumer cases were filed in 2008, as shown on Table 2A. The median current monthly income reported in such cases was \$2,713, the median average monthly income was \$2,344, and the median average expenses were \$2,665. The District of New Hampshire (NH) had the highest median current monthly income with \$3,473, and PR had the lowest with \$959. Debtors in CA-E had the highest median average monthly income with \$2,864, and those in PR had the lowest with \$1,096. The median average for expenses was highest in CA-S at \$3,489, and was lowest in PR at \$1,200.

Table 2B reveals that a total of 851 consumer cases were filed under chapter 11 during 2008, reflecting the limited use of chapter 11 reorganizations by individual debtors. Twenty districts reported no filings under this chapter. CA-C reported the largest number of filings with 98. Nationwide, the median current monthly income reported was \$8,000, the median average monthly income was \$9,313, and the median average expenses were \$10,311. Of the 19 districts for which medians were calculated, the District of Massachusetts (MA) had the highest median current monthly income with \$11,510. IL-N had the highest median average monthly income with \$17,000. PR had the lowest median current monthly income with \$2,536, and FL-M had the lowest median average monthly income at \$6,035. At \$13,914, the medi-

<sup>11</sup> It is not meaningful to calculate medians when the number of cases is small. For this reason, the AO does not calculate medians for fewer than 10 cases at any aggregate level (e.g., district, circuit).

<sup>12</sup> See note 4.

<sup>13</sup> See note 4.

an average expenses were highest in the Western District of Washington (WA-W), and filers in the Middle District of Tennessee (TN-M) had the lowest median average expenses with \$6,073.

A total of 356,352 chapter 13 consumer cases appear on Table 2D as filed in 2008. The median current monthly income for such cases was \$3,655, the median average monthly income was \$3,326, and the median average expenses were \$2,698. Filers in the Eastern District of New York (NY-E) had the highest median current monthly income with \$6,553, and those in PR had the lowest with \$1,964. Debtors in NY-E also had the highest median average monthly income at \$5,798, and debtors in PR had the lowest at \$1,972. The median average expenses were also highest in NY-E at \$4,813 and lowest in the Western District of Tennessee (TN-W) at \$1,452.

Data in this table are subject to the limitations described in the section above on debtor-provided data. Therefore, caution should be used when comparing data for any category of income or expenses to data for any other category of income or expenses or when comparing data for any category of income or expenses to the number of cases filed.

### **Time Interval from Filing to Closing**

In accordance with 28 U.S.C. § 159(c)(3)(D), Table 3 reports the mean time interval between filing and closing for consumer cases under chapters 7, 11, and 13 closed during the reporting period. The median time interval also has been included to provide perspective on the mean value by reducing the effect of data outliers, although median values are calculated only when 10 or more cases are reported.

This table presents data on cases filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt that were closed during the reporting period. Only data provided during the initial filing of each case is counted in this table; data for reopened cases are excluded, as most reopened cases are filed and closed relatively quickly to settle administrative matters and do not proceed in the same way as original filings. For transferred cases, the mean and median time intervals are calculated from the date the case is received at the new location to the closing of the case at that location.

During the 12-month period ending December 31, 2008, a total of 693,648 consumer cases that were opened on or after October 17, 2006, were terminated under chapters 7, 11, and 13, with a mean time interval from filing to disposition of 172 days and a median time interval of 121 days. The mean is 33 percent higher than that for 2007, and the median is 7 percent higher. The growth is likely due in part to a different universe of cases eligible for inclusion in the data calculations, a factor that becomes particularly evident in the time intervals elapsed for chapter 11 and chapter 13 cases, which typically take longer than chapter 7 cases to close, particularly if plans are completed.<sup>14</sup>

Of the 576,747 chapter 7 consumer cases closed in 2008, the mean time interval from filing to disposition was 151 days, and the median time interval was 118 days. The Southern District of Georgia (GA-S) had the highest median of any district at 183 days, and the Districts of Oregon (OR) and Hawaii (HI) had the lowest median at 99 days.

A total of 341 chapter 11 consumer cases were closed in 63 districts during 2008. The mean time interval from filing to disposition was 269 days, and the median time interval was 250 days. Only 9 districts had 10 or more chapter 11 cases closed.

<sup>14</sup> By December 31, 2007, the longest-running case reflected in the data presented in Table 3 could have been running for no more than 440 days (i.e., a case filed on October 17, 2006, and closed on December 31, 2007). By December 31, 2008, the maximum would be 806 days (i.e., a case filed on October 17, 2006, and closed on December 31, 2008).

Of those 9 districts, the Southern District of Florida (FL-S) had the highest median at 398 days, and CA-N had the lowest median at 143 days.

A total of 116,560 chapter 13 consumer cases were filed on or after October 17, 2006, and terminated during 2008. The mean time interval from filing to disposition was 277 days, and the median time interval was 247 days. The Northern District of New York (NY-N) had the highest median at 464 days, and the District of Rhode Island (RI) had the lowest median at 70 days. However, the median and mean do not accurately convey the time required for a typical chapter 13 case because the majority of the chapter 13 cases closed were dismissed, not discharged.<sup>15</sup>

Data in this table are subject to the limitations described in the section above on cases filed and closed. Because the maximum period that a case covered in this report can be open is 806 days, the means and medians in this report are especially low for chapter 11 and chapter 13 cases and will likely continue to increase in the future. Therefore, caution should be used when relying on these data as representative of typical case duration.

### Reaffirmation Agreements

A debtor may enter into a reaffirmation agreement with the creditor to continue paying a dischargeable debt following the bankruptcy. If an attorney represented the debtor in the bankruptcy case, the debtor's attorney may or may not represent the debtor during negotiation of a reaffirmation agreement. For purposes of this report, a reaffirmation agreement is considered "pro se" if it was submitted without the certification of an attorney contained in Part C of Form 240A, regardless of whether or not the debtor was otherwise represented in the case by an attorney.

Table 4 reports only on reaffirmations filed in cases under chapter 7. Although reaffirmation agreements are technically possible under other

chapters of the Bankruptcy Code, as a practical matter, they are found almost exclusively in chapter 7. This is largely the direct result of provisions in the code under chapters 11, 12, and 13 that permit modification and restructuring of secured claims. Modification of a secured creditor's rights is not possible under chapter 7 without consent of the creditor; hence, a debtor who wishes to retain collateral securing a claim will need to negotiate a reaffirmation agreement acceptable to the creditor. However, under chapters 11, 12 and 13, subject to certain restrictions, the terms of a secured claim may be altered, and the debtor will retain use of the collateral, obviating the need for a reaffirmation agreement.

Varying local practices govern the procedures for approving and denying reaffirmation agreements filed with the courts. In many districts, the court does not issue an order with respect to a reaffirmation agreement filed with the certification of the debtor's attorney. In these instances, the reaffirmation agreement between the debtor and creditor are implicitly accepted without further court action and may or may not be recorded or otherwise noted in court documentation of the case. Reaffirmation agreements filed without the certification of an attorney may or may not receive a ruling by order of the judge; however, in many cases the judge will hold a hearing regarding the reaffirmation agreement. In some districts, every reaffirmation agreement must be submitted with a motion and draft order, an affidavit of concurrence by the debtor's attorney (if any), and be subject to a hearing before the judge. Often, multiple reaffirmation agreements may be submitted together under a single motion, some with and others without attorney concurrence, and the order may lack clarity as to the decision of the court on individual reaffirmation agreements. Some courts have changed or are considering changes to their local rules and procedures to better track and document reaffirmation agreements and actions on them.

<sup>15</sup> See Table 6.

For these reasons, the data reported for approved reaffirmation agreements may not be representative of the total number of reaffirmation agreements executed by the parties. Furthermore, the difference between the number of reaffirmation agreements filed and the number of reaffirmation agreements approved does not represent the number of reaffirmation agreements denied.

As Table 4 illustrates, a total of 594,682 reaffirmation agreements were reported as filed in 143,097 chapter 7 consumer cases terminated during the 12-month period ending December 31, 2008.<sup>16</sup> The Eastern District of Michigan (MI-E) had the highest total number of cases in which reaffirmation agreements were filed (7,168), followed by IL-N (6,118). In 10 percent of cases with reaffirmation agreements filed, one or more agreements were submitted without attorney certification (*pro se*). The District of Kansas (KS) had the highest number of cases in which at least one *pro se* reaffirmation agreement was filed (1,066 out of 1,137). The Western District of Virginia (VA-W) had the highest percentage of cases in which one or more reaffirmation agreements were filed *pro se* (95 percent).

Approximately 1 percent of cases in which a reaffirmation agreement was filed had at least one reaffirmation agreement approved by order of the court. However, as described above, this does not indicate that reaffirmation agreements were denied in 99 percent of the cases. In 2008, the District of Montana (MT) reported the highest number of cases in which at least one reaffirmation agreement was approved (258 of 273, or 95 percent), followed by the Northern District of Mississippi (MS-N) (584 of 1,069, or 55 percent). Together, these two districts accounted for 46 percent of the cases in which at least one reaffirmation agreement was approved.

Table 4 presents data on cases filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt that were closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on cases filed and closed. Caution should be used when relying on these data as representative of cases closed during a reporting period. Data in this table are subject to the limitations of collecting data on docketing activity as described above in the sections on debtor-provided data and transaction data, including limitations with respect to *sua sponte* orders. Since data on reaffirmation agreements are captured from docket activity, the collection of accurate data for this table is dependent on the submission and accurate recording of the correct motions, agreements, and other filings with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all.

### Property Valuation Orders

In some cases, motions are made to the court to determine the value of property securing an allowed claim pursuant to 11 U.S.C. §§ 506 and 1325, and to Federal Rule of Bankruptcy Procedure (FRBP) 3012. Table 5 reports the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim, as well as the number of final orders entered determining the value of property securing a claim as provided in 28 U.S.C. § 159(c)(3)(F)(I). Additional columns of data were added to provide further perspective on the required data. Due to the complexities of implementing the new data collection methods for transaction data, certain data collection issues have precluded the collection of all indicators as to

<sup>16</sup> Because a debtor may enter into more than one reaffirmation agreement, a case is counted in any column of the table for which the case has one or more reaffirmation agreements that meet the criteria for that column. For example, if a debtor enters into three reaffirmation agreements, two of which are endorsed by the debtor's attorney and one of which is not endorsed by the debtor's attorney, the case is counted in the column for "number of cases with agreements filed *pro se*." If only one of the three reaffirmation agreements in the example above is approved by the court, the case is counted in the column for "number of cases with agreements approved."

whether a determination of value is above or below the amount of the claim.

A total of 118,440 chapter 13 consumer cases were terminated in 2008, including 4,969 cases in which plans were completed and 113,289 cases that were dismissed.<sup>17</sup> Final orders determining the value of property securing a claim were entered in 451 of the cases closed in 2008. In 247 cases, the value of property was reported in one or more final orders; in 177 of those cases, at least one final order valued the property at less than the full amount of the claim.

A case may have more than one final order determining the value of property securing a claim. As a result, 535 final orders were entered in 451 cases. Determinations of the value of property were reported in 299 final orders, of which 210 were valued below the amount of the claim. FL-M reported that 153 final orders had been entered determining the value of property securing a claim, the highest total of any district. Sixty-nine percent of the final orders determining the value of property securing a claim (368 final orders) were entered in districts that constitute the 11<sup>th</sup> Circuit.

Table 5 reports on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt and closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on cases filed and closed. In particular, since the typical chapter 13 plan provides for payments over a period of three to five years, the proportion of closings by plan completion relative to cases closed by dismissal remains artificially low in this report. The issue of property valuation often may not arise until the case is at or near confirmation. Consequently, motions to value collateral should be relatively more infrequent among chapter 13 cases that are dismissed, especially among those dismissed prior to confirmation. Furthermore, since a plan under chapter 13 may not be completed for several years, and valuation orders

will not be reported until the case is closed, the number of final property valuation orders reported for cases closed during 2008 will not be representative of a typical year. Thus, caution should be used when relying on these data as representative of typical cases closed during a reporting period.

Data in this table are also subject to the limitations of collecting docketing activity as described in the sections above on debtor-provided data and transaction data. Because data on valuation orders are captured from docket activity, collection of accurate data for this table is dependent on submission of the correct motions, agreements, and other matters with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all. In addition, if a filer submits multiple filings under a single court event, the activities will either be undercounted or not counted at all.

### **Chapter 13 Cases Closed by Dismissal or Plan Completion**

Table 6 shows the number of cases in which plans were completed in chapter 13 consumer cases, separately itemized by the number of modifications made to the plans as well as the number of chapter 13 consumer cases dismissed, the number dismissed for failure to make payments under the plan, and the number refiled after dismissal. For purposes of this table, a chapter 13 consumer case is counted as “refiled after dismissal” if the case was filed during the reporting period by one or more debtors who were party to a separate chapter 13 consumer case that was dismissed no more than 180 days prior to the filing date of the current case. Cases that are reopened are not included in the total for cases refiled after dismissal.

A total of 118,440 chapter 13 consumer cases filed on or after October 17, 2006, were closed by dismissal or plan completion during the 12-month period ending December 31, 2008. Table 6 illus-

<sup>17</sup> See Table 6.



trates that 113,289 of these cases were dismissed, and 4,969 cases (4 percent of cases closed) were discharged after the debtors completed repayment plans. Of the 4,969 chapter 13 consumer cases in which debtors completed repayment plans, 210 cases had plans that were modified at least once prior to plan completion. The Northern District of New York (NY-N) had the most plan completions with 835, followed by the Eastern District of North Carolina (NC-E) with 464 plan completions. These two districts also had the highest percentages of cases closed by discharge, with 53 percent in NY-N and 27 percent in NC-E closed by plan completion.

The Northern District of Georgia (GA-N) had 8,152 cases closed by dismissal, the highest total for all districts. Nationwide, failure to make plan payments was cited in 42 percent of cases as the reason for dismissal. Ninety-two percent of all cases dismissed in the Southern District of Alabama (AL-S) were dismissed for failure to make payments, the highest percentage of any district. The District of Guam (GU) had the lowest percentage of cases dismissed for failure to make payments, as no cases there were dismissed for that reason, followed by the District of Connecticut (CT), which had 2 percent dismissed for failure to make payments. Table 6 shows that 13,227 cases were refiled after dismissal, with 1,438 cases refiled in GA-N, the most in any district.

This table presents data on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt that were closed by the end of the reporting period. Thus, data in this table are subject to the limitations described in the section above on cases filed and closed. Caution should be used when relying on these data as representative of typical rates of plan completion, case dismissal, and refiling. The number of cases refiled after dismissal will be particularly affected, because data on both refiled cases and the prior dismissed cases are subject to these limitations. In addition, it appears that many cases were erroneously reported as closed for failure to

pay plan payments when, in fact, the cases were closed for failure to pay fees.

### **Prior Filings Reported by Debtors**

Table 7 reports the number of cases in which individual debtors with primarily nonbusiness debts filed for protection under chapter 13 during the reporting period and indicated on the voluntary petition for bankruptcy (Official Form 1) that they previously had filed for bankruptcy under any chapter of the Bankruptcy Code during the preceding eight years (“prior filings”). Data for this table are captured at the time of filing, and only data on the initial filing of each case are counted in this table; data on reopened cases are excluded to prevent duplicate reporting. The data for Table 7 are provided exclusively by the debtors and are subject to the limitations described in the section above on debtor-provided data.

In 30 percent (105,783) of the 356,352 cases in which debtors sought protection under chapter 13 in 2008, debtors stated that they had filed for bankruptcy during the previous 8 years. In the remaining 70 percent of cases, debtors either stated that they had not filed for bankruptcy during the previous 8 years (250,524) or did not report this information (45 cases). TN-W had the largest number of cases in which debtors reported prior filings at 7,308 cases, followed closely by GA-N with 6,960 cases. Debtors filing in TN-W also recorded the highest percentage of cases with prior filings at 52 percent. The district with the lowest percentage of cases in which debtors indicated prior filings was the District of Alaska (AK) with only 10 percent of cases.

### **Creditor Misconduct and Punitive Damages**

Title 28 U.S.C. § 159 (c)(3)(G) requires the Director of the AO to report on “the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded

by the court for creditor misconduct.” However, creditor misconduct is not a specific cause of action under Title 11. At least five violations of the Bankruptcy Code could be considered creditor misconduct: dismissal of an involuntary petition (11 U.S.C. § 303(I)), willful violation of the automatic stay (11 U.S.C. § 362(h)), collusive bidding (11 U.S.C. § 363(n)), violation of the injunction against attempting to collect a discharged debt (11 U.S.C. § 524(a)(2) and (3)), and determination of dischargeability of consumer debt (11 U.S.C. § 523(d)). In addition, at least six activities related to the litigation process could also be considered creditor misconduct under certain circumstances: sanctionable filings under FRBP 9011, improper activity related to pretrial conference and order (FRBP 7016), sanctionable discovery requests, responses, or objections (FRBP 7026), failure to make or cooperate in discovery (FRBP 7037), failure to prosecute or to comply with court orders and rules (FRBP 7041), and unreasonably or vexatiously multiplying proceedings (28 U.S.C. § 1927). As a consequence, what may be reported as creditor misconduct in one district may not be so reported in another.

Because a creditor may be reprimanded for misconduct in many ways, this table does not provide a comprehensive picture of sanctions imposed against creditors in bankruptcy courts. A sanction imposed for creditor misconduct is likely limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Although sanctions may consist of or include directives of a nonmonetary nature, an order to pay a penalty into court, or an order directing payment to the movant of some or all of the reasonable attorneys’ fees and other expenses incurred as a direct result of the violation, the Bankruptcy Code and Rules do not permit the award of punitive damages for every violation classifiable as creditor misconduct. However, only punitive damages are reflected in the Table 8 series.

Table 8X shows that creditors were fined for misconduct in 91 consumer cases closed during

2008 and that orders to pay punitive damages were issued in 20 of those cases. Creditor misconduct was recorded in 70 chapter 7 cases, including 11 in NY-N. Punitive damages were awarded in 15 of those cases, totaling \$63,000. No creditor misconduct was reported for chapter 11 consumer cases closed during 2008. Creditor misconduct was recorded in 21 chapter 13 cases, with punitive damages totaling \$39,000 awarded in 5 of those cases.

This table reports on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt and closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on cases filed and closed. Caution should be used when relying on these data as representative of typical for cases closed during a reporting period. Furthermore, data in this table are subject to the limitations of collecting docketing activity as described in the sections above on debtor-provided data and transaction data, including those limitations involving *sua sponte* orders. Data on creditor misconduct are captured from docket activity, so accurate collection of data for this table is dependent on accurate docketing and submission of correct information on motions, agreements, orders, and other filings with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all. In addition, if a filer submits multiple filings under a single court event, the activities will be undercounted or not counted at all.

### **Rule 9011 Sanctions Imposed Against Debtors’ Attorneys**

FRBP 9011 provides that attorneys may be sanctioned for improper or frivolous representations to the court submitted in any petition, pleading, written motion, or other paper. The rule states that “a sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.” Any “sanction may

consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, ...or an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." The Table 9 series captures only misconduct that rises to the level required for sanctions under FRBP 9011. Because a debtor's attorney may be reprimanded for misconduct in other ways, this table does not provide a comprehensive picture of sanctions imposed against debtors' attorneys in bankruptcy courts.

Table 9X shows that 713,487 consumer cases were filed on or after October 17, 2006, and terminated during the 12-month period ending December 31, 2008. Sanctions were imposed against debtors' attorneys in 17 of these cases. FRBP 9011 sanctions were imposed against debtor's attorneys in 11 chapter 7 consumer cases; damages totaling \$6,000 were awarded in 6 of those cases. No sanctions were imposed in any chapter 11 consumer cases. Of the 118,440 chapter 13 consumer cases terminated in 2008, sanctions were assessed in 6

cases, with damages awarded in 1 case in the District of Maryland (MD).

This table reports on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt and closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on cases filed and closed. Caution should be used when relying on these data as representative of typical for cases closed during a reporting period. Furthermore, data in this table are subject to the limitations of collecting docketing activity as described in the sections above on debtor-provided data and transaction data, including limitations involving *sua sponte* orders. Data on FRBP 9011 sanctions are captured from docket activity, so accurate collection of data for this table is dependent on submission of correct information on motions, agreements, and other filings with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all. In addition, if a filer submits multiple filings under a single court event, the activities will either be undercounted or not counted at all.